testimony for this issue in the record and, thus, pursuant to the Commission's Order of October 31, 1996, this issue is not subject to resolution by the Commission. BellSouth recommended that the Commission dismiss this issue as beyond the scope of this proceeding.

CONCLUSIONS

The Commission concludes that this issue is not subject to resolution pursuant to the Commission's Order of October 31, 1996.

ISSUE NO. 27: PERFORMANCE MEASUREMENTS
Contract Location: Attachment VIII, Section 4.4 and 4.5
Page 64 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI proposes specific performance standards for billing measurements while BellSouth proposes to incorporate the OLEC Daily Usage File service into a BellSouth and MCI billing forum which will develop the appropriate billing measurements for service parity. BellSouth also cited Finding of Fact No. 3, where the Commission declined to impose performance standards, and stated that there was no specific testimony supporting MCI's request. BellSouth recommended that the Commission dismiss this issue as beyond the scope of this proceeding pursuant to its Order of October 31, 1996. The Commission concluded, in response to objections and comments, that its original decision in Finding of Fact No. 3 should be affirmed.

CONCLUSIONS

The Commission declined to enact specific performance standards in its RAO issued in this docket. This original decision is affirmed by the Commission in the Comments/Objections section of this Order.

ISSUE NO 28: BRANDING OF 611 REPAIR CALLS
Contract Location: Attachment VIII, Section 5.1.14
Page 70 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI proposes that: "All MCIm subscribers shall be able to continue to use the established local dialing protocol to access the repair center. Upon dialing '611,' the subscriber shall be presented with a non-branded menu that requests the input of the subscriber's telephone number. Once the telephone number is provided, the subscriber shall be transferred to the MCIm repair center. Whenever BellSouth receives a repair call

directly from an MCIm subscriber, without voice response menu prompts, the call shall be unbranded and transferred to the appropriate MCIm repair center." MCI states that this provision ensures that MCI's subscribers have access to repair centers at parity with the access BellSouth provides to its subscribers.

BellSouth proposes that: "Until a long-term industry solution is established for customized routing, MCIm shall establish a seven or ten digit toll-free number for access to its repair center. When such a solution is available, BellSouth shall make available to MCIm the ability to route non-branded 611 repair calls dialed by MCIm subscribers directly to the MCIm repair center." BellSouth cited Finding of Fact No. 5, where the Commission declined to require customized routing at this time and encouraged all parties to work to develop a long-term, industry-wide solution to technical problems. BellSouth stated it cannot route 611 repair calls to the MCI repair center without customized routing.

The Commission declined to require customized routing in its original decision in Finding of Fact No. 5 and encouraged all parties to work to develop a long-term, industry-wide solution to technical problems and affirmed its original decision in the Comments/Objections section of this Order.

CONCLUSIONS

The Commission concludes that this issue is not subject to resolution, provided that MCI may agree to BellSouth's language or the parties may agree to other mutually agreeable terms.

ISSUE NO. 29: PERFORMANCE MEASUREMENTS
Contract Location: Attachment VIII, Section 5.4
Page 71 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

This is a variation of the unresolved issues previously discussed in Issue No. 10 and Issue No. 24, with reference to various maintenance measurements.

CONCLUSIONS

The Commission finds that this issue is not subject to resolution provided that MCI may elect to accept the language proposed by BellSouth or the parties may negotiate other mutually agreeable terms.

ISSUE NO. 30: BUSY LINE VERIFICATION IN CONTEXT OF INTERIM NUMBER PORTABILITY
Contract Location: Attachment VII, Section 5.4
Page 74 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

The issue presented is one of technical feasibility. MCI requests that BellSouth operators redirect calls which are not switched correctly. BellSouth states that its operators cannot access the information needed to direct such calls. In the absence of evidence that the procedure requested by MCI is technically feasible, there is no basis for requiring the language proposed by MCI.

CONCLUSIONS

The Commission concludes that this section should be deleted as proposed by BellSouth.

ISSUE NO. 31: ELECTRONIC INTERFACES – DATE OF IMPLEMENTATION
Contract Location: Attachment VIII–64, Section 6.1.4.1.1
Page 76 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI and BellSouth have agreed that BellSouth will accept orders via electronic interface in accordance with approved Telecommunications Industry Forum/Electronic Data Interchange (TCIF/EDI) technical mapping within nine months of published release of that approved standard. However, in the interim, MCI proposes that BellSouth be required to provide a standard format for electronic exchange for placing orders by January 1, 1997, whereas BellSouth proposes a date of April 1, 1997.

BellSouth states that its proposal is consistent with the determination of the Commission regarding the development of electronic interfaces. In the RAO, in Finding of Fact No. 4, the Commission encouraged BellSouth to diligently pursue the development of electronic interfaces, such that they will be provided promptly. It is BellSouth's opinion that the date of April 1, 1997, reflects its intent to provide on-line access as expeditiously as practicable. Further, BellSouth stated that the date of April 1, 1997, was derived from an Order of the Georgia Public Service Commission.

CONCLUSIONS

The Commission recognizes that BellSouth's proposal represents its intent to provide on-line, electronic access as expeditiously as practicable, which is consistent with

the Commission's finding in the MCI/BellSouth RAO, regarding the development and implementation of electronic interfaces. Accordingly, the Commission considers that BellSouth's proposal is reasonable in this regard.

ISSUE NO. 32: BELLSOUTH'S PROVISION OF FRAUD PREVENTION FEATURES AND FUNCTIONALITIES
Contract Location: Attachment IX–4, Section 3.1
Page 77 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

In regard to this Section on future fraud prevention or revenue protection features, the distinction between BellSouth's proposal and the language proposed by MCI lies in the specific information digits used in the payphone context. As part of the fraud prevention features to be made available by BellSouth, MCI requests that BellSouth provide information digits '29' and '70' which indicate prison and COCOT payphone originating line types, respectively. BellSouth is proposing to provide information digits assigned such as code '07' which indicate special handling of the call is required.

MCI states that BellSouth is capable of assisting MCI in reducing the risk of fraud by providing the information digits, '29' and '70'. MCI argues that BellSouth should not be able to sell a product over which it can control the risk without taking reasonable steps to assist in reducing the risks of such fraud occurring.

BellSouth states that it currently sends the '07' code indicating the call requires special handling and that it is developing a query system that will allow MCI and others to gain further information when the '07' code is sent. According to BellSouth, the FCC, In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Third Report and Order, 61 FR 26466, adopted April 5, 1996, recognized that the '29' and '70' codes which MCI is demanding ". . . would generally be included in the larger 06 or 07 categories." Additionally, BellSouth states that there was no specific testimony supporting MCI's request, and thus, pursuant to the Commission's Order of October 31, 1996, the Commission should dismiss this issue as beyond the scope of this proceeding.

Additionally, the Commission understands that it is quite possible that the requested '29' and '70' information digits cannot be provided by BellSouth at this time.

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as a matter beyond the scope of this proceeding and, thus, finds this issue not subject to resolution.

However, the Commission further concludes that MCI may agree to BellSouth's proposed language or that, otherwise, the parties should negotiate other mutually agreeable terms.

ISSUE NO. 33: LIABILITY FOR LOST REVENUES RESULTING FROM HACKER FRAUD
Contract Location: Attachment IX–4, Section 3.1.2
Page 79 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI requests that BellSouth assume the risk associated with all third-party fraud upon the software underlying the network elements or their subtending operational support systems and reimburse MCI for its losses associated with such third-party fraud. MCI argues that where BellSouth has administrative control over the network elements, BellSouth should use reasonable care to prevent losses to MCI caused by third-party fraud. MCI proposes the following language:

> "Uncollectible or unbillable revenues resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending operational support systems by unauthorized third parties shall be the responsibility of the party having administrative control of access to said Network Element or operational support system software."

BellSouth proposes that the MCI language should be changed as follows (the underlined text reflects the difference between the parties, — i.e. it is the language added by BellSouth):

> "Uncollectible or unbillable revenues resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending operational support systems by unauthorized third parties shall be the responsibility of the party having administrative control of access to said Network Element or operational support system software <u>to the extent such unbillable or uncollectible revenue results from the gross negligence or willful act or omission of the party having such administrative control</u>."

Under BellSouth's proposal, BellSouth would assume the risk of unbillable or uncollectible revenue resulting only from its own gross negligence or willful act or omission. BellSouth argues that MCI's position is inappropriate, as it would place BellSouth in the position of being an insurer against the action of others, including the illegal acts of third parties. BellSouth further argues that MCI is attempting to impose a general term with respect to liability, contrary to the Commission's RAO. Furthermore, BellSouth states that the pricing requirements of Section 252(d) of the Act do not contemplate the cost associated with the assumption of such risk. Additionally, BellSouth

states that there was no specific testimony supporting MCI's request, and thus, pursuant to the Commission's Order of October 31, 1996, the Commission should dismiss this issue as beyond the scope of this proceeding.

The issue of BellSouth's liability for errors that lead to unbillable or uncollectible revenues was not set forth by MCI and BellSouth in their respective matrices as an issue in the MCI/BellSouth arbitration proceeding. However, this matter of liability was raised as an issue in the AT&T/BellSouth arbitration proceeding. In the AT&T/BellSouth--RAO, the Commission specifically addressed the issue of BellSouth's liability for errors that lead to unbillable or uncollectible revenues. The Commission reached the following conclusion:

> "The Commission declines to enact specific standards governing liability by BellSouth for errors which may result in unbillable or uncollectible revenues. Instead, the affected parties should negotiate reasonable terms and conditions regarding liability for unbillable or uncollectible accounts."

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as a matter beyond the scope of this proceeding and, thus, concludes that this issue is not subject to resolution. The Commission declines to enact specific standards governing liability by BellSouth for errors which may result in unbillable or uncollectible revenues. Furthermore, the Commission refers the parties to the RAO issued for AT&T/BellSouth in Docket No. P-140, Sub 50, wherein at the Evidence and Conclusions for Finding of Fact No. 4, the Commission stated that it ". . . does not believe it is appropriate or practical for the Commission to get involved, at this stage, in adopting provisions governing liability for errors."

ISSUE NO. 34: LIABILITY FOR LOST REVENUES RESULTING FROM CLIP-ON FRAUD AND OTHER ILLEGAL OR UNAUTHORIZED ENTRY INTO THE BELLSOUTH NETWORK

Contract Location: Attachment IX--4, Section 3.1.3
Page 81 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

This issue is virtually the same issue as that just addressed in Issue No. 33, except that it pertains to fraud arising from unauthorized physical attachment to loop facilities.

MCI requests that BellSouth assume the risk associated with unauthorized use of the service provider network whether that compromise is initiated by software or physical attachment to loop facilities from the main distribution frame up to and including the network interface device, including clip-on (toll) fraud and reimburse MCI for its losses

associated with such third-party fraud. MCI states that it has no control over the local network elements or the services it purchases from BellSouth. It is MCI's opinion that without such control, it cannot prevent such fraud and so it should not be held liable for such. MCI proposes the following language:

> "BellSouth shall be responsible for any uncollectible or unbillable revenues resulting from the unauthorized use of the service provider network whether that compromise is initiated by software or physical attachment to loop facilities from the Main Distribution Frame up to and including the Network Interface Device, -including clip-on fraud. BellSouth shall provide soft dial tone to allow only the completion of calls to final termination points required by law."

BellSouth proposes that the MCI language should be changed as follows (the underlined text reflects the language added by BellSouth and the stricken text reflects what BellSouth has deleted):

> "BellSouth shall be responsible for any uncollectible or unbillable revenues resulting from the unauthorized ~~use of the service provider network whether that compromise is initiated by software or~~ physical attachment to loop facilities from the Main Distribution Frame up to and including the Network Interface Device, -including clip-on fraud to the extent such unbillable or uncollectible revenue results from the gross negligence or willful act or omission of BellSouth. BellSouth shall provide soft dial tone to allow only the completion of calls to final termination points required by law."

Under BellSouth's proposal, BellSouth would assume the risk of unbillable or uncollectible revenue resulting only from its own gross negligence or willful act or omission. BellSouth argues that MCI's position is inappropriate, as it would place BellSouth in the position of being an insurer against the action of others, including the illegal acts of third parties. BellSouth further argues that MCI is attempting to impose a general term with respect to liability, contrary to the Commission's RAO. Furthermore, BellSouth states that the pricing requirements of Section 252(d) of the Act do not contemplate the cost associated with the assumption of such risk. Additionally, BellSouth states that there was no specific testimony supporting MCI's request, and thus, pursuant to the Commission's Order of October 31, 1996, the Commission should dismiss this issue as beyond the scope of this proceeding.

The issue of BellSouth's liability for errors that lead to unbillable or uncollectible revenues was not set forth by MCI and BellSouth in their respective matrices as an issue in the MCI/BellSouth arbitration proceeding. However, this matter of liability was raised as an issue in the AT&T/BellSouth arbitration proceeding. In the AT&T/BellSouth–RAO,

the Commission specifically addressed the issue of BellSouth's liability for errors that lead to unbillable or uncollectible revenues. The Commission reached the following conclusion:

> "The Commission declines to enact specific standards governing liability by BellSouth for errors which may result in unbillable or uncollectible revenues. Instead, the affected parties should negotiate reasonable terms and conditions regarding liability for unbillable or uncollectible accounts."

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as a matter beyond the scope of this proceeding and, thus, concludes that this issue is not subject to resolution. The Commission continues to decline to enact specific standards governing liability by BellSouth for errors which may result in unbillable or uncollectible revenues. Furthermore, the Commission refers the parties to the RAO issued for AT&T/BellSouth in Docket No. P-140, Sub 50, wherein at the Evidence and Conclusions for Finding of Fact No. 4, the Commission stated that it ". . . does not believe it is appropriate or practical for the Commission to get involved, at this stage, in adopting provisions governing liability for errors."

ISSUE 35: PENALTY PROVISION
Contract Location: Attachment X, Entire Attachment is Disagreed
Page 83 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI contends on the basis of experience that the imposition of specific standards and penalties on the incumbent carrier are necessary to ensure the creation of a competitive market. BellSouth's position is that such provisions are, or require the creation of, detailed performance standards. In Finding of Fact No. 3 of the MCI/BellSouth–RAO, the Commission declined to involve itself in the setting of performance standards. While a provision of this nature is not inappropriate, the terms of the provision are not issues of fact or law suitable for arbitration. Furthermore, to the extent there are factual questions, there is not a sufficient evidentiary basis for a decision.

CONCLUSIONS

The Commission declines to decide this matter since it involves matters such as performance standards which are best resolved through arms-length negotiations by the affected parties and because the record does not provide a basis for a decision.

IT IS, THEREFORE, ORDERED as follows:

1. That the Composite Agreement submitted by BellSouth and MCI is hereby approved, subject to the modifications required by this Order.

2. That BellSouth and MCI shall revise the Composite Agreement in conformity with the provisions of this Order and shall file the revised Composite Agreement for review and approval by the Commission not later than 15 days from the date of this Order.

3. That the Commission will entertain no further comments, objections, or unresolved issues with respect to issues previously addressed in this arbitration proceeding.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of April, 1997.

NORTH CAROLINA UTILITIES COMMISSION

Geneva S. Thigpen

Geneva S. Thigpen, Chief Clerk

jw041197.01

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-140, SUB 50

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Interconnection with BellSouth Telecommunications, Inc.	))))	ORDER RULING ON OBJECTIONS, COMMENTS, UNRESOLVED ISSUES, AND COMPOSITE AGREEMENT

BY THE COMMISSION: On December 23, 1996, the Commission entered a Recommended Arbitration Order (RAO) in this docket setting forth certain findings of fact, conclusions, and decisions with respect to the arbitration proceeding initiated by AT&T Communications of the Southern States, Inc. (AT&T) against BellSouth Telecommunications, Inc. (BellSouth). The RAO required AT&T and BellSouth to jointly prepare and file a Composite Agreement in conformity with the conclusions of said Order within 45 days. The RAO further provided that the parties to the arbitration proceeding could, within 30 days, file objections to said Order and that any other interested person not a party to this proceeding could, within 30 days, file comments concerning said Order.

On January 22, 1997, AT&T filed certain objections to the RAO. BellSouth filed its objections to the RAO on January 23, 1997. Comments regarding the AT&T/BellSouth RAO were filed on January 22, 1997, by the Attorney General, Sprint Communications Company L.P. (Sprint), Carolina Telephone and Telegraph Company, and Central Telephone Company. The Carolina Utility Customers Association, Inc. (CUCA) filed comments on January 23, 1997. On February 21, 1997, AT&T and BellSouth filed their Composite Agreement and a list of nine unresolved issues, including the positions of the parties on each issue and each party's proposed contractual language, for consideration by the Commission.

WHEREUPON, after carefully considering all of the objections, comments, and unresolved issues, the Commission concludes that the RAO should be affirmed, clarified, or amended and set forth below and that the Composite Agreement should be approved, subject to the modifications set forth below.

ISSUES RELATED TO COMMENTS/OBJECTIONS

ISSUE NO. 1: What services provided by BellSouth should be excluded from resale?

INITIAL COMMISSION DECISION

The Commission concluded that BellSouth is obligated to offer at resale at wholesale rates any telecommunications services it provides at retail to subscribers who

are not telecommunications carriers, with certain exceptions, notably those related to cross-class resale, grandfathered or obsolete services, N11, and promotions of under 90 days. With respect to contract service arrangements (CSAs), the Commission found these to be retail services subject to resale.

COMMENTS/OBJECTIONS

BELLSOUTH: BellSouth objected to the application of wholesale discounts to CSAs, although BellSouth did not object to the finding that CSAs are retail services subject to resale. The gist of BellSouth's argument was that a requirement to resell CSAs at a wholesale discount would put BellSouth under a permanent competitive handicap whereby it would never beat the competitor's price. BellSouth cited Georgia and Kentucky decisions mandating resale but without the discount and a Louisiana decision concluding that existing CSAs will not be subject to resale while future CSAs will be subject to resale at no discount.

DISCUSSION

The Commission decision cited Paragraph 948 of the Federal Communications Commission's (FCC's) First Report and Order in CC Docket Nos. 96-98 and 95-185 issued on August 8, 1996 (the Interconnection Order), which construed Section 251(c)(4) of the Telecommunications Act of 1996 (TA96 or the Act) as having created no exceptions for promotional or discounted offerings, "including contract and other customer-specific offerings." The FCC reasoned that a "contrary result would permit incumbent LECs to avoid the statutory resale obligation by shifting customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act."

The fundamental conflict is that BellSouth contends that it would be permanently disadvantaged if it has to offer CSAs for resale at a discount while the FCC has expressed concern that, to do otherwise, would permit shifting of customers to nonstandard offerings, thus undercutting the intent of TA96. It would also put competitors at an extreme disadvantage.

This conflict has the appearance of a true conundrum. On the one hand, it is a colorable argument that, if BellSouth is compelled to offer all CSAs with the discount, it might be permanently "locked out" from offering CSAs directly to end users. On the other hand, it is also colorable that if BellSouth does not have to offer the discount, the competitor might be permanently "locked out" from resale of CSAs because there will be no discount margin on which it can compete. Thus, in terms of pure price relative to the CSAs, there appear to be two equally distasteful alternatives.

To resolve this impasse, the Commission believes that it is reasonable to require that CSAs entered into before April 15, 1997, be subject to resale, but not at a discount,

while CSAs entered into after that date will be subject to resale with the discount. The Commission believes it is unreasonable to require the "old" CSAs to be subject to the discount because they were entered into before BellSouth had any notion as to a resale requirement, and they are commonly discounted already. Applying the discount to "new" CSAs only will allow BellSouth the opportunity to adjust its pricing accordingly. At the same time, the "old" CSAs will not be absolutely sheltered from competition, because the competing local provider (CLP) can seek to compete by other means than pure price as, for example, by bundling additional services or offering a higher quality of service. Of course, the resale of CSAs is limited to the specific end-user for whom the CSA was instructed and may not be sold to the public-at-large.

CONCLUSIONS

The Commission concludes that CSAs entered into by BellSouth before April 15, 1997, shall be subject to resale at no discount, while BellSouth CSAs entered into after that date shall be subject to resale with the discount.

ISSUE NO. 2: What terms and conditions, including use and user restrictions, if any, should be applied to the resale of BellSouth services?

INITIAL COMMISSION DECISION

The Commission decided that use and user restrictions currently in BellSouth's tariff will carry forward into resold services with the exception of such prohibitions and restrictions as have been or will be specifically prohibited.

COMMENTS/OBJECTIONS

AT&T: AT&T contends that the Commission erred in this decision in shifting the burden to new entrants to prove unreasonableness. AT&T argues that the FCC excluded from the presumption of unreasonableness only restrictions on the resale of residential services to nonresidential customers and lifeline or other means-tested service offerings to non-eligible subscribers. All other restrictions are presumptively unreasonable. This reverses the burden of proof and violates the FCC Order and TA96, inasmuch as BellSouth has presented no evidence to rebut the presumption that the use and user restrictions are unreasonable. Accordingly, the RAOs should be modified to require BellSouth to remove all use and user restrictions, except as to those listed above.

DISCUSSION

The Commission in making its original decision was moved by two considerations. First, it expressed concern that use and user restrictions not applicable to a CLP but applicable to the ILEC would be discriminatory with reference to the ILEC. Second, the

Commission was concerned with practicality, since there are potentially many such restrictions, and it is impossible at this point to know exactly what they are. It would not be appropriate to eliminate the restrictions in a "summary and unexamined fashion." Nevertheless, ILECs were encouraged to examine their tariffs with a view toward removing unreasonable restrictions.

BellSouth argued that TA96 does not require it to enhance or otherwise alter its retail offerings for purpose of resale. It noted that the use and user restrictions are already being applied to BellSouth customers, and those restrictions were determined to be reasonable when the Commission approved them.

The Commission does not believe that its decision unlawfully shifts the burden of proof on CLPs to prove that a use and user restriction ought to be rescinded. The Commission was simply suggesting a practical mechanism whereby use and user restrictions might be questioned. The Commission is not prepared to say that all existing use and user restrictions, not otherwise rescinded, are a priori reasonable and nondiscriminatory.

CONCLUSIONS

The Commission affirms its original decision on this issue.

ISSUE NO. 3: What are the appropriate standards, if any, for performance metrics, service restoration, and quality assurance related to services provided by BellSouth and for network elements provided to CLPs by BellSouth?

INITIAL COMMISSION DECISION

The Commission declined to enact specific performance standards and instructed the parties to negotiate mutually agreeable terms.

COMMENTS/OBJECTIONS

AT&T: AT&T objected to the Commission's decision to decline to enact specific performance standards and noted that the parties had tried to negotiate this issue but could not reach agreement. AT&T cited two decisions in Tennessee and Georgia requiring BellSouth to negotiate performance standards and to submit the provisions to the state commissions for approval. AT&T also argued that, pursuant to TA96, Section 252(b)(4)(c), the performance standards constituted valid issues for Commission decision.

SPRINT: Sprint also objected and emphasized that specific performance standards are necessary for parity. Sprint urged the Commission to require BellSouth to indemnify

the CLP for any forfeitures or civil penalties by a BellSouth failure to meet service quality standards.

DISCUSSION

The Commission view was that it was neither appropriate nor practical for it to enact specific performance standards. The Commission viewed the parties as possessing superior expertise in this area.

The Commission continues to believe that it would be a mistake to impose performance standards on BellSouth at this time for the reasons stated in the RAO and that this constitutes a resolution of the issue within the meaning of TA96.

The Commission notes that BellSouth is expected to provide service to competitors that is at least equal to the service it provides itself.

CONCLUSIONS

The Commission affirms its original decision on this issue.

ISSUE NO. 4: Must BellSouth take financial responsibility for its own action in causing, or its lack of action in preventing, unbillable or uncollectible competitive revenues?

INITIAL COMMISSION DECISION

The Commission declined to enact specific standards governing liability by BellSouth for errors which may result in unbillable or uncollectible revenues and stated that the affected parties should negotiate reasonable terms and conditions regarding liability for unbillable or uncollectible accounts.

COMMENTS/OBJECTIONS

AT&T: AT&T objected to the Commission's decision to decline to enact specific standards governing liability for errors which result in unbillable or uncollectible accounts and noted that the parties had tried to negotiate this issue in good faith, but have been unable to reach a mutual agreement. AT&T also argued that, pursuant to TA96, Section 252(b)(4)(c), liability standards for errors committed by BellSouth constitute valid issues for decision by the Commission in this arbitration proceeding. AT&T further states that the state commissions in Tennessee and Georgia have issued Orders requiring BellSouth to negotiate liability/indemnification standards with AT&T and to submit those negotiated provisions for their approval.

DISCUSSION

The view expressed by the Commission in the RAO was that the interconnection agreement between BellSouth and AT&T does not have to contain any special provision regarding liability for errors such as a liquidated damages provision. For a number of years, AT&T has been a BellSouth customer for access service. Therefore, any remedies that have otherwise been available are still available with regard to local service. The Commission stated in the RAO that it did not believe it appropriate or practical to get involved, at this stage, in adopting provisions governing liability for errors. BellSouth has indicated a willingness to agree to reasonable provisions regarding liability for its errors. Therefore, the Commission opined that the parties, negotiating in good faith, could resolve this question without further need of Commission intervention.

The Commission continues to believe that it is unnecessary to impose liability standards on BellSouth at this time for the reasons stated in the RAO and that this constitutes a resolution of the issue within the meaning of TA96. Nevertheless, BellSouth is expected to conduct good faith negotiations with CLPs to resolve liability/indemnification issues and standards.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission concludes that it is appropriate to affirm the original decision on this issue declining to enact specific standards governing liability by BellSouth for errors which may result in unbillable or uncollectible revenues.

ISSUE NO. 5: Should BellSouth be required to provide real-time and interactive access via electronic interfaces for unbundled network elements as requested by CLPs to perform the following:

- **Pre-ordering,**
- **Ordering,**
- **Provisioning,**
- **Maintenance/repair, and**
- **Billing?**

INITIAL COMMISSION DECISION

BellSouth must diligently pursue the development of real-time and interactive access via electronic interfaces for unbundled network elements as requested by AT&T to perform pre-ordering, ordering, provisioning, maintenance/repair, and billing functions. The electronic interfaces should be promptly developed and provided based upon uniform, industry-wide standards.

COMMENTS/OBJECTIONS

AT&T: AT&T objected to the Commission's failure to set a date certain by which BellSouth is required to provide such interfaces. AT&T stated that BellSouth proposed and agreed to a deadline of December 31, 1997, in the Tennessee and Georgia arbitration proceedings, and noted that this date was adopted by both of those state commissions. Accordingly, AT&T is requesting that the Commission order BellSouth in North Carolina to provide AT&T, not later than December 31, 1997, with electronic real-time interactive interfaces for each of the following five functions: pre-ordering, ordering, provisioning, maintenance and repair, and billing, assuming BellSouth can obtain a waiver of the FCC's January 1, 1997, deadline.

CUCA: CUCA urged the Commission to establish a relatively near-term date by which BellSouth must provide AT&T with real-time, interactive interfaces to the unbundled network elements necessary for the proper performance of pre-ordering, ordering, provisioning, maintenance/repair, and billing functions. CUCA stated that the Commission should adopt the initial proposal advanced by the Attorney General— i.e., the Commission should require that a firm plan to implement automated interfacing with commitments to deadlines which are mutually satisfactory must be in place by March 31, 1997, with the interfaces developed and in place promptly thereafter and that if the arbitrating parties are unable to reach agreement, the Commission should order compliance at that time.

DISCUSSION

The Commission understood that the FCC Interconnection Order stated that nondiscriminatory access to the operations support systems functions should be provided no later than January 1, 1997. The Commission's view was that the requested electronic interfaces will indeed have to be provided and that they preferably should be uniform, industry-developed interfaces. Rather than establishing a specific date other than the FCC's provision, the Commission recognized that the electronic interfaces would likely not be developed by January 1, 1997, and simply found that the interfaces should be provided promptly through the development of uniform, industry-wide standards.

CONCLUSIONS

The Commission hereby affirms its original decision on this issue, but will require the parties to file a report not later than July 31, 1997, setting forth the status of their progress toward the accomplishment of electronic bonding through the development of uniform, industry-wide standards.

ISSUE NO. 6: Must BellSouth route calls for operator services and directory assistance services (OS/DA) directly to AT&T's platform?

INITIAL COMMISSION DECISION

The Commission declined to require BellSouth to provide customized routing at this time, saying it is not technically feasible, and encouraged the parties to continue working to develop a long-term, industry-wide solution to technical feasibility problems.

COMMENTS/OBJECTIONS

AT&T: AT&T repeated its arguments that the Act, generally, and the FCC Order, specifically, require customized routing absent a showing by BellSouth that it is not technically feasible. Pointing out that BellSouth admits that its switches are capable of performing this function through the use of line class codes (LCCs), although capacity may be limited, AT&T contended BellSouth has not met its burden of proving that customized routing is not technically feasible. AT&T also cited rulings by the Tennessee, Georgia, and Florida Commissions finding customized routing to be technically feasible through the use of LCCs. AT&T further stated that, if the recommended decision on customized routing is adopted, North Carolina consumers will be among the only consumers in BellSouth's territory who will not be able to dial "O" and reach their CLP's operators.

SPRINT: Sprint also argued that the Commission erred in declining to require customized routing and cited Section 251(c)(2) of the Act, which imposes on the incumbent LEC the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service and exchange access, at any technically feasible point within the carrier's network.

CUCA: CUCA argued that providing customized routing through the use of LCCs and advanced intelligent network (AIN) is technically feasible, according to the record, and therefore the Commission violated Sections 251(c)(2) and 251(c)(3) of the Act and the FCC's implementing regulations by failing to order customized routing.

DISCUSSION

The Commission was aware when it issued the RAO that customized routing can be provided through the use of LCCs. The Commission questioned, however, whether this is technically feasible "in any practical sense" because of capacity constraints and lack of uniformity among switches even if they are upgraded. Recognizing that this is not the long-term solution toward which the industry is working, the Commission declined to order the use of LCCs as an interim solution. The Commission was also aware that Bell Atlantic

has agreed to provide customized routing through the use of AIN. Despite AT&T's suggestion that we may have applied a narrower definition of technical feasibility than Congress intended, the Commission continues to believe that it would be unreasonable to require customized routing until a long-term, industry-wide solution is developed.

CONCLUSIONS

Based on the foregoing, and the entire evidence of record, the Commission concludes that its original decision on this issue should be affirmed.

ISSUE NO. 7: Must BellSouth brand services sold or information provided to customers on behalf of AT&T?

INITIAL COMMISSION DECISION

The Commission concluded that BellSouth should not be required to unbrand services provided to its customers but should be required to rebrand resold OS/DA when customized routing is available. The Commission further concluded that BellSouth should not be required to unbrand or rebrand its uniforms or vehicles and that its employees should not be required to use branded materials provided by AT&T, but should be allowed to use generic "leave behind" cards.

COMMENTS/OBJECTIONS

ATTORNEY GENERAL: The Attorney General objected to the Commission's failure to require unbranding of OS/DA until customized routing is in place. The Attorney General argued that permitting BellSouth to brand OS/DA as its own, even if it is providing the service to a competing provider, has the potential to confuse the customers of another carrier. Those customers will call directory assistance or the operator expecting to deal with their own local service provider and instead will get a message that they have connected with a competitor, BellSouth.

SPRINT: Sprint argued that the Commission erred in declining to require BellSouth to unbrand services provided to customers. Sprint cited Section 251(c)(4)(B) of the Act, which prohibits BellSouth from imposing unreasonable or discriminatory conditions or limitations on resale; Section 51.513 of the FCC's rules, which provides that where operator, call completion, or directory assistance service is part of the service or service package an ILEC offers for resale, failure by an ILEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale; and Section 251(c)(2)(D), which imposes on BellSouth a duty to provide for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

DISCUSSION

AT&T did not object to the decision on this issue. The Commission's rationale for not requiring BellSouth to unbrand OS/DA is explained in the RAO: BellSouth could never brand its services, even to its own customers, while the CLPs could brand their services when reached through unique dialing patterns. No new arguments have been presented.

CONCLUSIONS

Based on the foregoing, and the entire evidence of record, the Commission concludes that its original decision on this issue should be affirmed.

ISSUE NO. 8: Should BellSouth be required to allow AT&T to have an appearance (e.g. name, logo) on the cover of its white and yellow page directories?

INITIAL COMMISSION DECISION

BellSouth was not required to provide AT&T an appearance on the cover of its white and yellow page directories. AT&T is free to enter into a contract for any services it needs with BellSouth Advertising & Publishing Corporation (BAPCO).

COMMENTS/OBJECTIONS

BELLSOUTH: BellSouth notes that the RAO refers to BellSouth's affiliate, BAPCO, as "a wholly-owned subsidiary of BellSouth". However, as indicated in BAPCO's Petition to Intervene, BAPCO is an affiliate but not a subsidiary of BellSouth. BellSouth requests the Commission correct the factual misstatement contained in the RAO to properly reflect BAPCO as the "affiliate and/or agent of BellSouth".

DISCUSSION

The reference to BAPCO found in the Evidence and Conclusions for Finding of Fact No. 9 in the RAO should be corrected. BAPCO should be referred to as an affiliate and/or agent of BellSouth rather than a wholly-owned subsidiary of BellSouth.

CONCLUSIONS

The Commission agrees that the RAO should be corrected to properly reflect that BAPCO is an affiliate and/or agent of BellSouth.

ISSUE NO. 9: Are the following items considered to be network elements, capabilities, or functions? If so, is it technically feasible for BellSouth to provide CLPs with these elements?

- **Network Interface Device**
- **Loop Distribution**
- **Loop Concentrator/Multiplexer**
- **Loop Feeder**
- **Local Switching**
- **Operator Systems**
- **Dedicated Transport**
- **Common Transport**
- **Tandem Switching**
- **Signaling Link Transport**
- **Signal Transfer Points**
- **Service Control Points/Databases**

INITIAL COMMISSION DECISION

The Commission found that the following network elements, which were identified and required by the FCC to be provided on an unbundled basis, should be so provided:

- Local Loop,
- Network Interface Device (connection to be established through an adjoining NID deployed by the requesting carrier),
- Switching Capability (including local and tandem switching),
- Interoffice Transmission Facilities (dedicated to a particular customer or carrier, or shared by more than one customer or carrier),
- Signaling Networks and Call-Related Databases (including signaling links, signaling transfer points, and access to AIN databases through signaling transfer points), and
- Operator Services and Directory Assistance.

Further, the Commission made the following findings and conclusions on these matters.

(1) In its rules, the FCC provided for connection to the incumbent LEC's Network Interface Device (NID) through an adjoining network device deployed by the requesting telecommunications carrier. Therefore, the Commission concluded that BellSouth was not required to provide direct connection of an AT&T provided loop to BellSouth's NID but was required to allow an AT&T

loop connection to be established through an adjoining NID of AT&T (i.e., NID to NID).

(2) BellSouth has agreed to provide integrated digital loop carrier (IDLC) delivered loops as an unbundled network element. Therefore, the Commission considered this issue resolved and encouraged the parties to further negotiate the rates, terms, and conditions of providing unbundled loops from IDLC facilities.

(3) The Commission concluded that BellSouth was not required to provide unbundled direct access to its AIN database until a mediated access mechanism such as the Open Network Access Point had been developed on an industry-wide basis. The Commission encouraged BellSouth to actively participate in an industry-wide forum to promptly address this issue.

COMMENTS/OBJECTIONS

AT&T: AT&T objected to the Commission's decision related to the matter of accessing the AIN database, and in particular, that BellSouth is not required to provide unbundled direct access to its AIN database until a mediated access mechanism such as the Open Network Access Point has been developed on an industry-wide basis. AT&T argued that BellSouth must provide AT&T access to its signaling elements, including unmediated access to AIN Services. AT&T discusses that the use of a mediation device adversely impacts consumers in that it will increase post dial delay, create additional points of potential network failure, and increase the cost and time of implementing services to customers. AT&T asserted that, if however, the Commission determines that mediation is necessary, it should impose mediation in a nondiscriminatory manner by requiring AT&T and BellSouth to route its traffic through the same mediation device.

DISCUSSION

The Commission's view that it would not, at this time, require BellSouth to provide unbundling of its network behind the Signaling Transfer Point (STP) giving access to BellSouth's AIN until a mediated access device is developed was intended to protect the AIN database as well as the network.

With regard to AT&T's position to impose mediation upon BellSouth by requiring BellSouth to route its traffic through the same mediation device as AT&T must route its traffic, the Commission continues to believe that this would not be appropriate.

The Commission maintains that it would not be reasonable to require BellSouth to provide unbundled direct access to its AIN database until a mediated access mechanism has been developed on an industry-wide basis. Further, it would not be reasonable to

require BellSouth to route its traffic through a mediation device in accessing its own call-related databases.

CONCLUSIONS

Based on the foregoing and the entire evidence of record, the Commission concludes that its original decision on this issue should be affirmed.

ISSUE NO. 10: Should AT&T be allowed to combine unbundled network elements in any manner it chooses?

INITIAL COMMISSION DECISION

The Commission concluded that BellSouth should submit additional information describing in full detail workable criteria for identifying the combinations of unbundled network elements, if any, that constitute resold services for purposes of pricing, collection of access and subscriber line charges, use and user restrictions in retail tariffs, and joint marketing restrictions. The Commission also concluded that when local switching is purchased as an unbundled network element, vertical services should be included in the price of that element at no additional charge, but that when vertical services are obtained through resale, the discounted resale rate should apply.

COMMENTS/OBJECTIONS

AT&T: AT&T commented that the RAO correctly concludes that AT&T should be allowed to combine unbundled network elements in any manner it chooses, regardless of the nature of the service that it may create by the rebundling of those elements. AT&T argued, however, that the Act and the FCC Order clearly do not permit BellSouth to treat certain recombinations of unbundled network elements as essentially recreations of BellSouth services and to price that group of elements when purchased by the recombining carrier as a retail service with a wholesale discount.

BELLSOUTH: BellSouth objected to the inclusion of vertical services in the rate the CLPs pay for local switching. BellSouth argued that the various functions the Commission has ordered it to include in the local switching function are retail services which should be offered at the retail rates less the appropriate discount. BellSouth also submitted information with respect to "workable criteria" for identifying the combinations of unbundled network elements that constitute resold services. Drawing from recent decisions from Georgia and Louisiana, BellSouth contended that a CLP should bear the burden of persuasively demonstrating that the combination of unbundled elements from BellSouth does not constitute a resold BellSouth service. BellSouth further contended that if the CLP purchases an unbundled loop and unbundled local switching on behalf of a customer, the presumption should be that the CLP has effectively recombined unbundled

network elements in a manner that replicates a retail service. A CLP should bear the burden of persuasively demonstrating that the combination of requested unbundled elements from BellSouth does not constitute a resold BellSouth service. It may carry this burden only by showing that it is using its own substantive capabilities or functionalities in combination with the unbundled elements from BellSouth to produce its own service offering. If the CLP substitutes anything less than a substantive capability or functionality, the status of the offering would not change. Substitution of a substantive functionality, however, such as when a CLP supplies its own switching capability or local loop, would change the status of the offering, and under those conditions the CLP would pay only the price for the unbundled network elements.

SPRINT: Sprint argued that the Commission may not allow BellSouth to treat certain combinations of unbundled network elements as resold services and price them at the wholesale rates, because that would violate Section 251(c)(3) of the Act.

CUCA: CUCA contended that treating the recombination issue as a matter of pricing rather than a limitation on the ability of CLPs to combine unbundled network elements is a distinction totally without substance. According to CUCA, the effect of the Commission's decision is to deprive new entrants of the cost benefits of using one of the three entry strategies explicitly authorized by statute. By preventing a CLP from entering the market using combined unbundled network elements when the cost is less than operating as a reseller, the decision does interfere with its ability to combine unbundled network elements in any way it deems appropriate. To BellSouth's argument that failing to adopt its position will eviscerate the resale pricing provisions of the Act, CUCA responded that acceptance of BellSouth's position will eviscerate the unbundled network pricing provisions of the same statute.

DISCUSSION

Vertical Services

BellSouth stated that, in addition to the fundamental switching capability -- e.g., the ability to provide dial tone and to switch an incoming and outgoing call -- the switch has several other capabilities that can be individually activated upon request. Each of these features, when activated, represents a capability that is identical to an existing vertical feature that BellSouth offers on a retail basis. BellSouth argued that it should not be penalized in the price it is allowed to charge just because the vertical feature happens to be a capability inherent in the switch rather than a feature that can be accessed by the switch, such as operator services.

BellSouth further argued that the Commission has the authority to price vertical services as it chooses as long as those rates are "just, reasonable, and nondiscriminatory." TA96, Section 251(c)(3). Pricing vertical services at their retail rates, less the avoided

costs reflected in the wholesale discount, will meet this statutory requirement, while preserving support for "universally available telephone service at reasonably affordable (local exchange) rates," in accordance with the Commission's authority under House Bill 161. BellSouth noted the enormous contribution that vertical services provide to the maintenance of reasonable affordable local exchange rates – over $60 million in North Carolina revenue in 1995.

The fact that this is a pricing issue, as BellSouth contends, does not change the plain wording of the statute and the basis of the Commission's initial decision. The RAO, of course, does not preclude the pricing of vertical services at their retail rates less the wholesale discount when purchased as resale offerings. It simply requires the inclusion of these features, functions, and capabilities in the price of the unbundled switch element when purchased as such, in accordance with the Act and FCC interpretation.

Recombination of unbundled network elements

BellSouth quoted the Louisiana Public Service Commission (PSC), which ruled as follows:

> AT&T will be deemed to be "recombining unbundled elements to create services identical to BellSouth's retail offerings" when the service offered by AT&T contains the functions, features and attributes of a retail offering that is the subject of a properly filed and approved BellSouth tariff. Services offered by AT&T shall not be considered "identical" when AT&T utilizes its own switching or other substantive capability in combination with unbundled elements in order to produce a service offering. For example, AT&T's provisioning of purely ancillary functions or capabilities, such as operator services, Caller ID, Call Waiting, etc., in combination with unbundled elements shall not constitute a "substantive functionality or capability" for purposes of determining whether AT&T is providing "services identical to a BellSouth retail offering."

BellSouth stated that the conclusions reached by the Louisiana PSC on this issue can serve as the framework for identifying the combinations of unbundled elements that constitute resold services and contended that the PSC's analysis closely aligns with the testimony of Varner and Scheye in this proceeding. BellSouth also presented an Exhibit C, which, it said, depicts the unbundled elements that, if combined, would recreate existing tariffed local exchange service offered by BellSouth: 1. Unbundled loop, including NID/protector, and 2. Unbundled local switching.

In the RAO, the Commission found merit in BellSouth's position on this issue but perceived a need for additional information before attempting to implement a plan to price combinations of elements at wholesale rates. Bearing in mind the legal, technical, and

policy implications of our decision, we sought workable criteria for identifying combinations of unbundled network elements that constitute resold services. Because of the complexity of the issue, however, we are now of the opinion that even the most detailed definition will leave open questions that will likely have to be addressed on a case-by-case basis. In reaching our final decision, we have been guided by the principle of encouraging innovation rather than arbitrage and aided by recent decisions of the Tennessee, Georgia, and Louisiana Commissions.

CONCLUSIONS

Based on the foregoing, and the entire evidence of record, the Commission concludes that our original decision on this issue should be modified to provide that the purchase and combination of unbundled network elements by AT&T to produce a service offering that is included in BellSouth's retail tariffs on the date of the Interconnection Agreement will be presumed to constitute a resold service for purposes of pricing, collection of access and subscriber line charges, use and user restrictions in retail tariffs, and joint marketing restrictions. This presumption may be overcome by a showing that AT&T is using its own substantive functionalities and capabilities, e.g., loop, switch, transport, or signaling links, in addition to the unbundled elements to produce the service. Ancillary services such as operator services and vertical services are not considered substantive functionalities or capabilities for purposes of this provision.

The Commission further concludes that our original decision on the pricing of vertical services should be affirmed. Thus, when AT&T buys the switch at the unbundled element rate, it will receive vertical services at no additional charge, but when it buys combinations of elements to produce a BellSouth retail service, and thus comes under the resale pricing provisions, it must also pay the wholesale rate for vertical services, if those services are in the retail tariff on the effective date of the Agreement. Vertical services which are not in the retail tariff but which can be provided by the switch will be available at no additional charge.

ISSUE NO. 11: Must BellSouth provide AT&T with access to BellSouth's unused transmission media or dark fiber?

INITIAL COMMISSION DECISION

The Commission decided that dark fiber is not a telecommunications service. Further, the Commission decided that there was insufficient evidence to conclude that dark fiber is a network element. Therefore, BellSouth is not required to make dark fiber available to AT&T.